

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RENATO ARROYO and GENERAL SERVICES ADMINISTRATION,  
FEDERAL SUPPLY SERVICE, Belle Meade, NJ

*Docket No. 02-953; Submitted on the Record;  
Issued September 9, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant has established that he sustained an injury in the performance of duty.

The Board finds that appellant has not met his burden of proof to establish that he sustained a compensable injury in the performance of his federal employment.

On August 24, 2000 appellant, then a 42-year-old building maintenance mechanic filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that performing his employment duties caused sharp pain in his upper right wrist and thumb area.

In a letter received by the Office of Workers' Compensation Programs on August 29, 2000, appellant wrote:

“[O]n or about February 9, 2000 [I] started noticing that my right wrist and thumb area were numb and painful. As time went by the periods of numbness and pain kept increasing until it was almost impossible to do my job ... I ... was ... treated ... with ... a cortisone shot.... Two months later the condition returned and I am about to start with another hand specialist at my job. I am required to do many operations which seem to induce and aggravate the pain and numbness, which are so stressful. These tasks include use of pliers, hand wrenches, screwdrivers and painting. I am usually engaged [in] these tasks eight hours per day. This was the first period of this condition [that] I ... encountered. No wage loss has accord[ed].”

Appellant's medical history included nonwork-related back injuries in 1994, 1996 and 1998.

In support of his claim appellant submitted an August 23, 2000 medical report from Dr. Scott F. Garberman, a Board-certified hand surgeon. Dr. Gaberman wrote: “[R]ight

forearm/wrist examination reveals discomfort in the region of the intersection at the proximal first dorsal extensor compartment. A positive Finkelstein's test is noted. There is no deep seated joint clicking, locking instability or crepitus within the wrist itself. Watson's test as well as Ballotement are both negative. Wrist range of motion is somewhat limited due to discomfort.... A recent electromyogram (EMG) is essentially within normal limits." He diagnosed a right wrist de Quervain's tenosynovitis/intersection syndrome.

In a September 13, 2000 report, Dr. Garberman wrote that "[a]lthough moderate pain persists about the distal forearm/proximal first dorsal extensor compartment Finkelstein's test is less positive. [Appellant] has gained range of motion and strength." He repeated his diagnosis of de Quervain's tenosynovitis/intersection syndrome.

In an October 10, 2000 report, Dr. Phillip Pollen indicated that an electrodiagnostic testing showed right carpal tunnel syndrome and C7 radiculopathy.

In a November 17, 2000 letter, the Office requested more information from appellant.

In a February 28, 2001 decision, the Office denied appellant's claim finding that appellant had failed to establish fact of injury.

Appellant requested a hearing. In support of his claim appellant submitted a March 15, 2001 report from Dr. Garberman. In his report, Dr. Garberman reviewed appellant's medical history and added:

"Within reasonable medical probability, [appellant's] job as a maintenance mechanic did require repetitive use of the hand and wrist including the operation of tools and machinery. This included the use of screwdrivers, wrenches, pliers and other general maintenance activities. Therefore[,] within reasonable medical probability, it is reasonable to find causal relationship between [appellant's] initial treatment diagnosis and the type of job he had performed. [He] had no other predisposing factors medically and did not participate in any hobbies requiring repetitive hand activities."

In an April 16, 2001 report, Dr. John Hochenberg wrote that he was familiar with appellant's medical history and that the de Quervain's syndrome and median nerve entrapment are part of a repetitive motion disorder which is work related.

In an April 6, 2000 letter, Dr. Eric Schmetterling, a chiropractor wrote:

"This letter is to establish 'fact of injury.' History of injury is work[-]related trauma on February 9, 2000. Factors of employment include lifting, bending, carrying and other modes of physical labor. MRI [magnetic resonance imaging] [scans] studies reveal L5-S1 herniated disc on the right on two different occasions. EMG reports dated October 10 and October 24, 2000 revealed carpal tunnel syndrome. These findings are related to occupational injury of employment, *i.e.*, work related."

In a February 19, 2001 report, Dr. Elisabeth Post wrote:

“I found [appellant] to be very suggestible. As soon as I mentioned a symptom he rushed to agree he had that symptom. The most striking thing about [appellant] is that he rates his current pain as an eight and seems perfectly comfortable and is very clear he has left[-]sided problems when his MRI scan appearance clearly show[ed] a right[-]sided lesion. In addition to his back pain and carpal tunnel problem, he also states he has had diarrhea in the past and blames this on being in the Gulf War. One of his major concerns is that he is involved in the Air Force National Guard and during that training program he must dig foxholes and other things that he finds difficult....”

In an October 31, 2001 decision, the Office modified and affirmed its February 28, 2001 decision. The hearing representative found appellant had submitted sufficient factual information to establish work factors but the medical information was insufficient to establish a compensable injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained a compensable injury in the performance of his federal duties.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

The medical evidence appellant submitted lacked a rationalized explanation of the relationship between the diagnosed condition and appellant's employment factors.

Dr. Garberman's August 23 and September 13, 2000 reports do not discuss causal relationship. His March 15, 2001 report concludes that there is a causal relationship but he fails to explain what the relationship is.

Dr. Hochenberg's April 16, 2001 report states that appellant's de Quervain's syndrome and median nerve entrapment are part of a repetitive motion disorder that he says is work related. However, he does not explain how it is work related or provide a history that includes specific knowledge of appellant's daily work-related hand activities. While he noted that appellant used tools such as a screwdriver and pliers he did not indicate the extent or length of this use nor did he indicated knowledge that appellant also used power tools.

The opinion of Dr. Schmetterling has no probative value on the issue of whether appellant sustained an employment-related injury because his reports do not constitute medical evidence within the meaning of the Act. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.<sup>5</sup> However, Dr. Schmetterling did not indicate in his April 6, 2001 report that he found a subluxation demonstrated by x-rays to exist.

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>5</sup> 5 U.S.C. § 8107(a). See *Jack B. Wood*, 40 ECAB 95, 109 (1988).

None of the other medical evidence appellant submitted discussed causal relationship.

The October 31, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
September 9, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member